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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF CHAPARRAL CITY WATER
COMPANY, INC., AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANT AND
PROPERTY AND FOR INCREASES IN
ITS RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO: W-02113A-07-0551

**CHAPARRAL CITY WATER
COMPANY'S RESPONSE IN
OPPOSITION TO THE UTILITIES
DIVISION'S MOTION TO SUSPEND
TIME CLOCK**

Applicant Chaparral City Water Company, Inc. ("Company") hereby responds to the motion of the Utilities Division ("Staff") to postpone the Company's pending application for rate increases in this docket until the Arizona Corporation Commission ("Commission") has issued a decision in the remand proceeding being conducted by order of the Court of Appeals in Docket No. W-02113A-04-0616. Staff seeks this relief by the device of "staying the time clock" pursuant to A.A.C. R14-2-103(B)(11)(g) or, alternatively, A.A.C. R14-2-103(B)(11)(e).

As explained below, this motion is improper and groundless. It conflicts with Decision No. 57875 (May 18, 1992), which explains that A.A.C. R14-2-103(B)(11)(g) is not applicable to remand proceedings. Moreover, A.A.C. R14-2-103(B)(11)(e) is not intended to apply in this type of circumstance, as Decision No. 57875 makes clear. In addition, Staff's justification – that it may have to apply a different rate of return once the remand proceeding is decided – is frivolous because Staff routinely changes its

1 recommended rate of return in its surrebuttal filings, yet is able to make other necessary
2 adjustments, including adjusting its proposed revenue requirement and proposed rates.
3 Finally, the relief sought by Staff would violate the due process clauses of the United
4 States and Arizona Constitutions by preventing the Company from earning a fair return on
5 its utility plant and property devoted to public service. Accordingly, Staff's motion must
6 be denied.

7 **I. PROCEDURAL BACKGROUND**

8 **A. The Proceedings in Docket No. W-02113A-04-0616**

9 On August 24, 2004, the Company filed with the Commission an application for a
10 determination of the current fair value of its utility plant and property devoted to public
11 service, and sought increases in its rates and charges for utility service, based on a test
12 year ended December 31, 2003. *See* Decision No. 68176 (Sept. 30, 2005) at 1-3. On
13 September 23, 2004, Staff notified the Company that its filing met all of the sufficiency
14 requirements set forth in A.A.C. R14-2-103. *Id.* at 2.

15 Following the submission of pre-filed testimony by the parties, including
16 intervenor Residential Utility Consumer Office ("RUCO"), a hearing was conducted
17 before a duly authorized Administrative Law Judge, commencing on May 31, 2005. *Id.*
18 Following the submission of post-hearing briefs by the parties, the Commission issued
19 Decision No. 68176 on September 30, 2005, authorizing an increase in revenue of
20 \$1,107,596 and establishing new rates and charges for service based on Staff's inverted-
21 tier rate design. *Id.* at 3, 30-31, 38-39. The Company's new rates became effective on
22 October 1, 2005, and are currently in effect. *Id.* at 43-44.

23 The Company then sought rehearing on the decision, which was denied by
24 operation of law, and appealed the decision to the Arizona Court of Appeals pursuant to
25 A.R.S. § 40-254.01. *See Chaparral City Water Co. v. Ariz. Corp. Comm'n*, No. 1 CA-CC
26 05-002 (Feb. 13, 2007) at 2-5, ¶¶ 2-5 (summarizing procedural history of prior rate case).

1 Two issues were presented for review:

- 2 1. Does the "backing-in" method employed by the Commission
3 in setting rates, under which Chaparral City's authorized
4 operating income and revenues are based on the historic cost
5 of the Company's property, violate Article XV, §§ 3 and 14
6 of the Arizona Constitution?
- 7 2. Was the Commission's adoption of its Staff's recommended
8 equity return of 9.3 percent and resulting 7.6 percent return on
9 rate base arbitrary and unreasonable?

10 Chaparral City Water Company's Opening Brief, No. 1 CA-CC 05-002 (filed Feb. 23,
11 2006), at 5. The Court ruled in the Company's favor on the first issue (the lawfulness of
12 the "backing-in" method) and ruled in the Commission's favor on the second issue (the
13 adoption of Staff's 9.3 percent cost of equity recommendation). In the concluding
14 paragraph of its decision, the Court stated:

15 We find that the Commission did not comply with the
16 requirements of Article 15, Section 14, of the Arizona
17 Constitution when the Commission determined the operating
18 income of Chaparral City using the original cost rate base
19 instead of the fair value rate base. We therefore vacate the
20 Commission's decision and remand. However, we also find
21 that Chaparral City has not made a clear and convincing
22 showing that the Commission's decisions regarding the
23 methodologies used to determine cost of equity were
24 unlawful or unreasonable. Accordingly, although we vacate
25 the decision, we affirm the Commission's methodologies
26 used to determine the cost of equity. The matter is remanded
to the Commission for further determination.

19 *Chaparral City Water*, No. 1 CA-CC 05-0002 (Feb. 13, 2007) at 8, ¶ 49.

20 Following a three month period, during which the Commission considered but did
21 not seek review of the Court's decision by the Arizona Supreme Court, the Court of
22 Appeals issued its mandate to the Commission on May 29, 2007, commanding the
23 Commission "that such proceedings be had in [this] cause as shall be required to comply
24 with the decision of this court." After an unsuccessful attempt by the Company to discuss
25 settlement, the Company filed its remand schedules on June 8, 2007, based on the
26 testimony previously provided by its witnesses, Dr. Thomas M. Zepp and Thomas J.

1 Bourassa.¹

2 Thereafter, procedural orders were issued by the Presiding Officer, setting dates for
3 the filing of testimony and for the hearing in the remand proceeding. At present, the
4 hearing is set for January 28, 29 and 30, 2008. *See* Remand Hearing Fifth Procedural
5 Order (Oct. 3, 2007) (summarizing remand proceedings to date and setting hearing dates).

6 **B. The Proceedings in Docket No. W-02113A-07-0551**

7 On September 26, 2007 – nearly two years after Decision No. 68176 was issued
8 and the rates approved therein became effective – the Company filed an application for a
9 determination of the current fair value of its utility plant and property devoted to public
10 service, and appropriate increases in its rates and charges for utility service, based on a
11 test year ended December 31, 2006. As shown in the pre-filed testimony and schedules
12 accompanying Company's application, during 2006, the Company earned a rate of return
13 of **only 2.8 percent** on its fair value rate base. *See* Direct Testimony of Thomas J.
14 Bourassa, W-02113A-07-0551, at 3 & Schedule A-1. In contrast, the overall rate of return
15 recommended by Staff and adopted by the Commission in the Company's prior rate case
16 was 7.6 percent. Decision No. 68176 at 26. *See also* Surrebuttal Testimony of Alejandro
17 Ramirez, W-02113A-04-0616, Executive Summary ("Staff recommends that the
18 Commission adopt an overall rate of return ("ROR") of 7.6 percent.").

19 The Company's rate application was evaluated by Staff, and on October 26, 2007,
20 the application was determined to be sufficient under A.A.C. R14-2-103. Notably, Staff
21 was well aware that the remand proceeding was pending and would likely be decided next

22
23 ¹ The prefiled testimony of Dr. Zepp and Mr. Bourassa were identified and admitted into
24 evidence as Company Exhibits A-4, A-5 and A-6 (Bourassa) and A-7, A-8 and A-9
25 (Zepp). In addition, Dr. Zepp and Mr. Bourassa provided testimony during the
26 evidentiary hearing conducted before the Commission in 2005, at which time both
witnesses were subject to cross-examination regarding the Company's position that the
rate of return should be applied to the fair value of its utility plant and property, rather
than to the original or "book" cost of that property. *See* Docket No. W-02113A-04-0616,
Transcript at 132-218 (Bourassa); Tr. at 224-263 (Zepp).

1 spring when Staff's sufficiency letter was issued. *See, e.g.,* Remand Hearing Fifth
2 Procedural Order, Docket No. W-02113A-04-0616.

3 To date, Staff has served a total of **161 data requests**, not including subparts, on
4 the Company, and the Company has responded to those data requests. The Company,
5 obviously, was required to spend considerable time and incur significant expenses in
6 doing so. Again, Staff was well aware that the remand proceeding was pending when it
7 served these data requests on the Company. In fact, as recently as January 4, 2008, Staff
8 counsel contacted the undersigned regarding the Company's responses to Data Requests
9 MEM 2.2 and 2.3. Consequently, work on the rate case is proceeding, and the Company
10 is continuing to incur costs.

11 On November 19, 2007, RUCO moved to intervene in the new rate case, which
12 motion has been granted. On November 30, 2007, the Rate Case Procedural Order was
13 issued, with the hearing being scheduled to commence on July 8, 2008. Due to a
14 scheduling conflict, an Amended Rate Case Procedural Order was issued by Presiding
15 Officer on December 19, 2007, modifying the deadlines for pre-filed testimony by the
16 parties and setting the hearing for July 21, 2007.

17 Thereafter, on January 3, 2008, Staff filed the instant motion, seeking an order
18 from the Presiding Officer pursuant to A.A.C. R14-2-103(B)(11) that would stay all
19 proceedings in this docket until the Commission has issued a decision in the remand
20 proceeding in Docket No. W-02113A-04-0616.

21 **II. THE RELIEF SOUGHT BY STAFF, IF GRANTED, WOULD CAUSE**
22 **UNREASONABLE DELAY AND VIOLATE THE COMPANY'S**
23 **CONSTITUTIONAL RIGHTS**

24 **A. The Relief Sought by Staff Would Delay Rate Increases by Six Months**
25 **or Longer, and Prevent the Company From Earning a Fair Return**

26 Remarkably, absent from Staff's motion is any discussion of the adverse impact of
delaying the Company's pending rate case for an indefinite period of time. Staff estimates

1 that a decision in the remand proceeding will be issued in May 2008. Staff Mot. at 6.
2 However, there is no "time clock" or other deadline applicable to the remand proceeding
3 because it is not a rate application, and Staff's estimate of four months fails to take into
4 account the additional time needed to restart the pending rate case.² Realistically, Staff is
5 requesting a delay of approximately six months, if not longer.

6 Consequently, the relief sought by Staff would likely cause the hearing in the rate
7 case to be delayed until January 2009, and a final decision to be delayed until May 2009 –
8 more than 28 months from the end of the December 31, 2006 test year utilized in the
9 Company's rate application. New rates would likely become effective on June 1, 2009 or
10 later. In the meantime, the Company would be forced to charge the rates approved in
11 Decision No. 68176, which became effective on October 1, 2005 and, as stated, are
12 producing a rate of return below 3 percent on the Company's fair value rate base.
13 Moreover, delaying the hearing in this case until early 2009, with a decision following
14 approximately four months later, raises the possibility that the Company's test year will be
15 found to be stale, requiring the Company to file a new rate application, to be decided in
16 mid- or late 2009.

17 In short, postponing rate relief for six months or even longer would impair the
18 Company's earnings and deprive it of the opportunity to earn a fair return on the fair value
19 of its property, an opportunity guaranteed by the Arizona Constitution.

20 **B. The Relief Sought by Staff Would Violate the Company's**
21 **Constitutional Right to Earn a Fair Return on the Fair Value of Its**
22 **Property**

23 Article 15, Section 3, of the Arizona Constitution provides that "[t]he Corporation
24 Commission shall . . . prescribe just and reasonable classifications to be used and just and

24 ² The Company assumes that once the Company's rate case is stayed, Staff will not
25 perform any work on the case until a new procedural order has been issued by the
26 Presiding Officer, requiring Staff to resume work. At that time, it is likely that Staff will
request additional time to re-familiarize itself with the Company's filing and responses to
Staff's 161 data requests, causing further delay.

1 reasonable rates and charges to be made and collected, by public service corporations
2 within the State for service rendered therein.” The Arizona Court of Appeals has
3 explained:

4 [T]he rates established by the Commission should meet the
5 overall operating costs of the utility and produce a reasonable
6 rate of return. It is equally clear that the rates cannot be
7 considered just and reasonable if they fail to produce a
reasonable rate of return or if they produce revenue which
exceeds a reasonable rate of return.

8 *Scates v. Ariz. Corp. Comm’n*, 118 Ariz. 531, 533-34, 578 P.2d 612, 614-15 (App. 1978).
9 *See also Ariz. Corp. Comm’n v. Ariz. Pub. Serv. Co.*, 113 Ariz. 368, 370, 555 P.2d 326,
10 328 (1976) (“The company is entitled to a reasonable return upon the fair value of its
11 properties ...”), *citing Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 294 P.2d
12 378 (1956).

13 The failure to allow the Company rate adjustments necessary to produce a
14 reasonable rate of return on the fair value of its utility plant and property results in the
15 confiscation of such property, is in violation of the United States and Arizona
16 Constitutions:

17 The guiding principle has been that the Constitution protects
18 utilities from being limited to a charge for their property
19 serving the public which is so “unjust” as to be confiscatory.
20 ... If the rate does not afford sufficient compensation, the
State has taken the use of utility property without paying just
compensation and so has violated the Fifth and Fourteenth
Amendments.

21 *Duquesne Light Co. v. Barasch*, 488 U.S. 299307-08 (1989) (citations omitted).

22 Here, the Company earned a return below 3 percent on the fair value of its property
23 during the test year – a return that is equivalent to a 30-day Treasury instrument. By
24 contrast, the return on an investment grade (Baa) bond is approximately 6.7 percent.
25 Forcing the Company to continue to charge rates that produce this anemic return because
26 Staff is uncertain what might happen in the remand proceeding ordered by the Court of

1 Appeals, based on its determination that the Commission violated the Arizona
2 Constitution in setting the Company's rates in its last case, would violate these
3 requirements and result in the confiscation of the Company's property.

4 Consequently, even if there were a legitimate basis for the relief sought by Staff,
5 such relief would be unlawful. As one would logically expect, given a utility's
6 constitutional right to collect just and reasonable rates for the services it provides to the
7 public, the Commission's rules do not permit the regulatory deadlines set forth in A.A.C.
8 R14-2-103(B)(11) to be suspended absent truly extraordinary circumstances, and not
9 because an Arizona court has held that the Commission acted illegally in the utility's
10 previous rate case.

11 **III. THE COMMISSION'S RULES DO NOT SUPPORT STAFF'S MOTION**

12 In support of its motion, Staff relies on A.A.C. R14-2-103(B)(11)(g) and A.A.C.
13 R14-2-103(B)(11)(e), which were added to A.A.C. R14-2-103 in 1992. *See* Decision No.
14 57875. Attachment B to Decision No. 57875 contains the reasons for adopting the
15 proposed amendments and a detailed discussion of the arguments for and against the
16 amendments. The Commission's discussion demonstrates that neither regulation is
17 intended to apply in this type of situation. It is telling that Staff never discusses or even
18 refers to the Commission's decision in its motion. *See* Staff Mot. at 2-3.

19 **A. A.A.C. R14-2-103(B)(11)(g) Does Not Apply to Remand Proceedings**

20 A.A.C. R14-2-103(B)(11)(g) provides that "[t]he time periods prescribed by
21 subsection (B)(11)(a) [*sic*] shall not be applicable to any filing submitted by a utility
22 which has more than one rate application before the Commission at the same time." This
23 regulation, discussed on pages 33 and 34 of Attachment B to Decision No. 57875, was
24 criticized by a number of Arizona utilities when it was proposed. In short, the utilities
25 expressed concern that the phrase "more than one rate application" would be interpreted
26 to include tariff filing, rate applications filed by separate subsidiaries, departments or

1 divisions, and, more importantly, the remand of a rate decision to the Commission by a
2 court of competent jurisdiction. In evaluating these concerns, the Commission explained:

3 The Commission also shares Staff's interpretation that tariff
4 filings and rate applications of a company's separate rate
5 jurisdictions are not covered by this provision. We do not
6 believe that an amendment is necessary, however. The
7 definition of a filing in A.A.C. R14-2-103(A)(3)(q) clearly
8 does not encompass these matters **nor the remand of a rate**
9 **decision by a court**.

10 *Id.* at 34 (emphasis added).³ Consequently, the remand proceeding is not a "filing" within
11 the meaning of the regulation, and A.A.C. R14-2-103(B)(11)(g) does not apply.

12 **B. A.A.C. R14-2-103(B)(11)(e) Does Not Apply Because the Company Has**
13 **Not Amended Its Rate Application and the Remand Proceeding Is Not a**
14 **Truly "Extraordinary Event"**

15 The other Commission regulation cited by Staff is A.A.C. R14-2-103(B)(11)(e),
16 which provides:

17 Upon motion of any party to the matter or on its own motion,
18 the Commission or the Hearing Officer may determine that
19 the time periods prescribed by subsection (B)(11)(d) should
20 be extended or begin again due to:

- 21 (i) any amendment to a filing which changes the amount
22 sought by the utility or substantially alters the facts
23 used as a basis for the requested change in rates or
24 charges; or
- 25 (ii) an extraordinary event not otherwise provided for by
26 this subsection.

Staff argues in its motion that both subparts of this regulation may apply to the
Company's rate application. Once again, however, the purposes of this regulation
preclude the regulation's application in the manner sought by Staff.

On its face, the circumstances in subpart (i) are not present. The Company has not

³ The definition of the term "filing" contained in A.A.C. R14-2-103(A)(3)(q) is "[a]n application and required schedules, exhibits or other documents filed by a public service corporation to initiate any proceeding enumerated in subsection (A)(1). For all Class A and B utilities and for Class C electric and gas utilities, the filing shall include direct testimony in support of the application. ..."

1 filed an amendment to its rate application and has never indicated that it intends to do so.
2 Unless and until the Company files an amendment “which changes the amount sought” or
3 “substantially alters the facts used as a basis for the requested change in rates or charges,”
4 this subpart is simply inapplicable. *See* Decision No. 57875, Attachment B at 30-31
5 (discussing the materials that constitute an amendment to a utility’s rate application).

6 Staff also argues that the Court of Appeals’ mandate remanding Decision No.
7 68176 for further proceedings consistent with its February 13, 2007 decision qualifies as
8 an “extraordinary event” for the purposes of subpart (ii). In discussing the regulation, the
9 Commission emphasized that Staff faces an especially heavy burden in demonstrating that
10 an event is “extraordinary”:

11 We believe that the language of the proposed rule already
12 places reasonable constraints on the Commission’s discretion.
13 A recomputation of the applicable time period will not even
14 be considered unless an amendment to a utility’s filing
15 changes the amount of rate relief requested or substantially
16 alters the underlying facts, or unless an extraordinary event
17 has occurred. **This is intended to be a higher standard to**
18 **meet than “good cause”.**

19 *Id.* at 29-30 (emphasis added). Staff has failed to meet this burden.

20 Obviously, the Court of Appeals’ remand of a decision authorizing rates based on a
21 determination that the Commission acted unlawfully is likely to have an impact on the
22 utility’s next rate application. Consequently, the mere existence of a proceeding on
23 remand from the Court of Appeals does not and cannot constitute an “extraordinary
24 event.” To conclude otherwise would create a conflict with the Commission’s discussion
25 of the purpose and scope of A.A.C. R14-2-103(B)(11)(g), quoted above. In other words,
26 Staff could simply claim that a remand proceeding constitutes an “extraordinary event”
and circumvent the Commission’s clear intent to limit the applicability of A.A.C. R14-2-
103(B)(11)(g) to undecided rate filings. Staff should not be allowed to manipulate the
Commission’s regulations in this manner. Moreover, the justification for treating the

1 pendency of the remand proceeding as an “extraordinary event” in Staff’s motion is weak
2 at best, and fails to satisfy the “higher than good cause” standard adopted by the
3 Commission.

4 1. The Outcome of the Remand Proceeding Is Unknown, and May Have
5 No Effect on Staff’s Choice of Methodology

6 Staff argues that the outcome of the remand proceeding may impact Staff’s
7 analysis. Staff Mot. at 3. Staff also concedes, however, that “the outcome of the remand
8 proceeding is unknown” (*id.*), i.e., Staff’s argument is based on speculation. Presumably,
9 Staff will take the same position regarding the appropriate methodology to be used in
10 developing a rate of return to be applied to the Company’s fair value rate base that it has
11 taken in the Company’s remand proceeding and in the recent rate proceeding for UNS Gas
12 in Docket No. G-04204A-06-0463. If Staff subsequently elects to change its position and
13 utilize fair value in a meaningful way, the implications, if any, of Staff’s new position can
14 be addressed at that time.

15 2. Parties’ Positions Routinely Change During the Course of a Rate
16 Case

17 Staff next contends that the Commission’s ultimate decision in the remand
18 proceeding could result in additional work for Staff employees, noting that changes in the
19 revenue requirement proposed by Staff will necessitate adjustments to property and
20 income tax expense and may affect Staff’s proposed rate design. Staff Mot. at 4. This
21 argument is a red herring. In fact, Staff (as well as the other parties to a rate case)
22 routinely changes its position in regard to the utility’s rate of return, rate base and
23 operating expenses, necessitating precisely the same adjustments in Staff’s surrebuttal
24 filing and, in some cases, post-hearing filing. Indeed, at Open Meeting, the Commission
25 itself sometimes adopts amendments to recommended orders in rate cases, requiring
26 conforming adjustments to the revenue increase, taxes and the rate design, which are

1 typically calculated in a week or less.

2 In the Company's prior rate case, for example, Staff originally recommended that
3 the Commission adopt an 8.9 percent return on equity and an overall rate of return of 7.3
4 percent. *See* Direct Testimony of Alejandro Ramirez, Docket No. W-02113A-04-0616,
5 Executive Summary. In its surrebuttal filing, however, Staff recommended that the
6 Commission adopt a 9.3 percent return on equity, and an overall rate of return of 7.6
7 percent. Surrebuttal Testimony of Alejandro Ramirez, Docket No. W-02113A-04-0616,
8 Executive Summary. In addition to changing its recommended rate of return, Staff
9 proposed different rate bases, a different adjusted operating income, and a different
10 increase in annual revenue. *Compare* Direct Testimony of Jamie Moe, Docket No. W-
11 02113A-04-0616, Schedule JRM-1 *with* Surrebuttal Testimony of Jamie Moe, Docket No.
12 W-02113A-04-0616, Schedule JRM-1. The different increase in annual revenue required
13 Staff to calculate different property taxes and income taxes as both are revenue driven.

14 In other recent proceedings, Staff has similarly changed its recommended rate of
15 return, resulting in the recalculation of property taxes and income taxes, and the
16 development of a new revenue requirement and rate design. For example, in the recent
17 rate case for Gold Canyon Sewer Company, Staff recommended that the Commission
18 adopt an overall rate of return of 8.4 percent. Direct Testimony of Steven P. Irvine,
19 Docket No. SW-022519A-06-0015, Executive Summary. In its surrebuttal filing, Staff
20 recommended an overall rate of return of 9.2 percent. Surrebuttal Testimony of Steven P.
21 Irvine, Docket No. SW-022519A-06-0015, Executive Summary. *Also compare* Far West
22 Water & Sewer, Direct Testimony of Steven P. Irvine, Docket No. WS-03478A-05-0801,
23 Executive Summary (recommending an overall rate of return of 7.8 percent) *with*
24 Surrebuttal Testimony of Steven P. Irvine, Docket No. WS-03478A-05-0801, Executive
25 Summary (recommending an overall rate of return of 7.6 percent). In these and other
26 cases, Staff was required to perform the same calculations described in Staff's motion

1 based on Staff's revised rate of return.

2 In sum, the position of Staff and the other parties frequently change during the
3 course of a rate case, necessitating revisions and re-computation of various expenses,
4 taxes and rates. Revisions of this nature are not unusual, much less extraordinary.
5 Accordingly, the possibility that Staff may decide to revise its recommendations following
6 the Commission's decision in the remand proceeding is not a legitimate basis to stay this
7 case.

8 3. Because the Parties' Positions Frequently Change During the Course
9 of a Rate Case, Staff's Concern About "Notice" Is Groundless

10 For the same reason, Staff's final argument is also a red herring. Staff argues that
11 its testimony "sets forth the test year revenue, the required increase in revenue, and the
12 increase in the typical median and average monthly bills" and this information may
13 change depending on the outcome of the remand proceeding. Staff Mot. at 5. Because
14 Staff and the other parties frequently make revisions to their recommended rate base,
15 operating expenses and rate of return during the course of the case, however, the required
16 increase in revenue and impact on typical customer bills also change during the case.
17 Thus, in the Company's prior rate case, Staff originally proposed an annual increase in
18 revenue of 11.25 percent, but proposed a different increase, 13.05 percent, in its
19 surrebuttal filing. See Direct Testimony of Jamie Moe, Docket No. W-02113A-04-0616,
20 Schedule JRM-1; Surrebuttal Testimony of Jamie Moe, Docket No. W-02113A-04-0616,
21 Schedule JRM-1. To the Company's knowledge, revisions of this nature have never been
22 found to be sufficient grounds to suspend or re-start the "time clock" under R14-2-
23 103(B)(11)(e). Indeed, if Staff's position were adopted, rate cases would be routinely
24 suspended to allow time to re-notice customers. Such a result would be, again, contrary to
25 the Commission's intent. See Decision No. 57875, Attachment B at 30-31 (explaining
26 that rebuttal testimony "will not be considered an amendment to the application").

1 Given these circumstances, Staff's claim that it cannot "determine the appropriate
2 rate level on a prospective basis" or compare such rate level to the existing rate level
3 (Staff Mot. at 5) makes no sense. The Company was required by A.A.C. R14-2-103 to
4 provide such information in its rate filing and has done so without any difficulty. What
5 Staff appears to be really arguing is that the baseline revenue level may change,
6 depending on the Commission's decision in the remand proceeding. That argument is
7 also misplaced, however. In the remand proceeding, the recommendations of Staff, if
8 adopted, would result in little or no change in the Company's rates. Indeed, as explained
9 in the Company's remand rebuttal filing in Docket No. W-02113A-04-0616, Staff's
10 proposed methodology is designed to produce a required operating income that is
11 approximately equal to the result produced under the "backing in" method used in
12 Decision No. 68176. The Company's recommendation, which applies the overall rate of
13 return to the fair value rate base, would result in a modest increase in base rates.⁴ If such
14 recommendations were adopted, it will be a relatively simply matter to recompute the
15 Company's revenue at existing and proposed rates. It certainly doesn't require the
16 Company's rate case to be postponed indefinitely.

17 In sum, as the Presiding Officer is well aware, the positions of the parties to a rate
18 proceeding typically change during the course of the proceeding as the parties update their
19 analyses (e.g., the cost of equity and overall rate of return), elect to adopt the positions of
20 another party, or simply correct errors that come to light during the course of the
21 proceeding. In this case, we simply do not know whether and to what extent the remand
22 proceeding may affect the Company's new rate application. Staff's "parade of horrors"
23 argument is groundless.

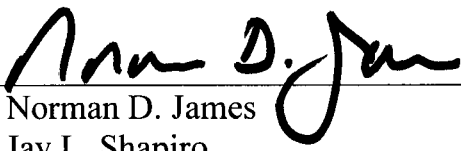
24
25 ⁴ The increase for an average customer receiving service by means of a 3/4-inch meter
26 would be about \$2.00 per month or approximately 7.5 percent. See Rebuttal Testimony of
Thomas J. Bourassa, Docket No. W-02113A-04-0616, Rebuttal Remand Schedule A-1.

1 **IV. CONCLUSION AND RELIEF REQUESTED**

2 For the foregoing reasons, Staff's motion to suspend the "time clock" in this case
3 must be denied. Neither of the regulations cited by Staff authorizes the indefinite
4 suspension of the Company's new rate application, which has been pending since last
5 August, was found sufficient by Staff in October, and was set for hearing in November.
6 In addition, an indefinite stay will effectively force the Company to continue to provide
7 service at rates that fail to produce a reasonable return on the fair value of the Company's
8 property, in violation of the United States and Arizona Constitutions. Therefore, Staff
9 seeks relief that is both unauthorized and illegal.

10 RESPECTFULLY SUBMITTED this 8th day of January, 2008.

11 FENNEMORE CRAIG, P.C.

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Company

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20 **ORIGINAL** and thirteen (13) copies
21 of the foregoing were delivered
this 8th day of January, 2008, to:

22 Docket Control
23 Arizona Corporation Commission
24 1200 W. Washington St.
Phoenix, AZ 85007

1 Copy of the foregoing was sent via telecopier and
2 hand-delivered this 8th day of January, 2008, to:

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5 Arizona Corporation Commission
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